

**Submission to the Finance Committee by Henry Wykowski Esq.**

Allow me to introduce myself and share some of my background so that the Committee may better evaluate my statement and understand the gravamen of being denied an equal opportunity to utilize banking merely because I represent cannabis industry associations and operators.

After graduating from Tulane Law School in 1974, I briefly worked for a small law firm in New Orleans before joining the Carter Presidential Campaign. After President Carter's election, I accepted a position in the Tax Division, Criminal Section, U. S. Department of Justice. My assignment was to investigate and prosecute tax crimes in multiple jurisdictions throughout the country. In that position it became apparent that the best way to address the underground economy and eliminate underreporting of income, was to encourage the deposit of all proceeds to better track their source, use and accurate reporting for tax purposes. In 1979, I was assigned a high-profile investigation and prosecution in San Francisco. At the conclusion of the case, I accepted an offer to become an Assistant U.S. Attorney in that office, where I continued to prosecute tax and other financial crimes.

In late 1982, I entered private practice, accepting an offer as a mid-sized firm's trial counsel. In 1986, I started my own firm. My practice involved the defense of white-collar federal crimes and civil litigation involving financial fraud matters. Around 2005, I was asked to represent a well-regarded cannabis dispensary in connection with an alleged tax deficiency based on IRC 280E. At the conclusion of trial, the tax court awarded the IRS approximately 1% of the amount they were seeking. Thereafter, the IRS began to aggressively assert IRC Sec. 280E in audits of numerous dispensaries, who in turn retained me to represent them. In 2012, the U.S. Department of Justice filed forfeiture actions against three well known cannabis dispensaries in the San Francisco Bay area: Harborside Health Center (the largest cannabis dispensary in the country), Berkeley Patients Group (the oldest operating dispensary in the country) and Shambhala Cannabis Collective. I and my firm represented each of them and obtained dismissals with prejudice in each of the actions, thus defeating the government's attempt to eliminate the medical cannabis industry.

When I began my practice in 1986, I established my bank account at University National Bank which was subsequently consolidated with Comerica Bank. When I undertook representation of the dispensaries in the forfeiture actions noted above, I contacted my banker and explained that these clients would be paying me in cash (because they were denied traditional banking accounts). I inquired if this would cause any problems with my account. After she assured me it would not, we began depositing our cash fees into the account. Shortly thereafter I received a letter from Comerica's corporate offices advising me that my accounts (my attorney trust account and my operating account) would be closed. I immediately called my banker to determine what had happened and was assured by her that it was a mistake, that I had been a wonderful client for 25+ years, and they "would never let me go." A few days later, she apologetically informed me that she had been instructed to close the accounts and was not provided any reason.

Assuming the cash deposits triggered the account closings, I opened an account with First Republic Bank down the street from my office. During the intake I explained that I had a general practice and my income was derived solely from fees generated from my clients, some of whom were state licensed medical cannabis dispensaries. They opened the accounts and I banked there from early 2013 until mid-2018, when they advised me that my accounts would be closed because I represented cannabis clients. While acknowledging that this was disclosed when the accounts were opened, they advised the rescission of the Cole Memo by Attorney General Sessions changed their position. I next went to Chase, again disclosing my practice included licensed cannabis dispensaries. The account manager confirmed the following day that the bank had “goggled” me and it was apparent that I was known for my representation of the industry. A few months later, the manager called to tell me that the accounts would be closed pursuant to a decision by the compliance department.

I then began the search for a new bank without immediate success. Each time I disclosed my representation of cannabis dispensaries our business was declined. In desperation I reached out to an attorney I met during my representation of Harborside in the forfeiture action. He represented the bank which held the mortgage on Harborside’s location. He agreed to recommend the bank take on the account because what I was doing was providing legal representation to those in the industry who were licensed and in compliance with state law. Besides, he noted that I gave good advice and had a successful record to prove it. The bank agreed to take on the accounts, but then reversed its decision after they entered negotiations for a sale/merger with another banking entity. I have until mid-March to find another bank.

When I asked why my accounts were being closed, I was told that it was because I was involved in a “cannabis related” business. Of course, if my business was a “cannabis related” business, so was theirs because they received mortgage payments for the building from which Harborside operated. Indeed, anyone who sold gas to licensed distributors, provided electricity or water to licensed cultivators, or states and municipal entities who collected tax revenue or licensing fees were also now a “cannabis related” business.

My inability to open and maintain a bank account is wrong on many levels. As a proud former federal prosecutor whose work resulted in awards, it is contrary to my principles as an attorney. Everyone is entitled to representation and this is an interference with that recognized constitutional right. When I pursued civil rights cases in New Orleans, I was allowed to bank. When I represented individuals or entities charged with criminal conduct, I was allowed to bank. Indeed, it is well recognized in federal criminal law that if a defendant’s assets are seized, enough of those funds to secure representation would be released for that purpose.

I am proud of the work I have done for the cannabis industry. I am a founder of the National Cannabis Industry Association and serve as its counsel (nearly 2000-member businesses and professionals). The California Cannabis Industry Association (approximately 500 members) and the National Cannabis Bar Association (nearly 600 members) have each asked me to serve as their counsel as well. Together these three organizations represent an industry that has gained acceptance with a majority of American citizens, with medical use allowed in thirty-three states and adult use in ten states, along with the District of Columbia.

There is something fundamentally wrong when laws and policies meant to maintain the legal integrity of our financial institutions get in the way of people seeking legitimate advice. My clients, and others in the industry, depend on my firm to advise them on how to operate in compliance with state law. The employees of my firm depend on me for a pay check. My firm and others doing similar work for the cannabis industry should be permitted banking access without restriction or fear of reprisal.

Thank you for your consideration and in advance for your assistance.